TAN CHIN HOCK

v.

GOVERNMENT OF MALAYSIA & ANOR.

HIGH COURT, PENANG
DATUK MOHAMED DZAIDDIN BIN HAJI ABDULLAH SCJ
[ORIGINATING PETITION NO. 26-2-90]
12 FEBRUARY 1993

REVENUE LAW: Estate duty - Whether supplementary estate duty leviable - Whether assessment of estate duty proper - Construction of ss. 4 & 5 Estate Duty Enactment 1941 - Principles of construction of taxing statutes.

The deceased together with others were co-owners of property which was forfeited to the State Authority for non-payment of quit rent. After the death of the deceased the co-owners applied to the State Authority for the annulment of the forfeiture which application was granted.

The question that arose was whether estate duty was leviable on the share of the property of the deceased upon reversion of the property to the registered owners after her death.

Held:

[1] In a dispute as to the construction of a taxing Act, it is for the Revenue to show that the case is within the Act, and not for the taxpayer to show otherwise. It is a first principle of taxing law that its language is not to be strained to an unnatural use in order to enlarge its scope. The fundamental principle of interpretation of taxing statutes is that they must be interpreted strictly by reference to the words of the Act.

[2] Applying the above principles of strict construction it was clear that s. 5(1) of the Estate Duty Enactment means what it says, that is that property passing on the death of the deceased shall be deemed to include the property of which the deceased was at the time of his death competent to dispose.

[3] It was not disputed that at the time of the deceased's death the said property remained vested in the Kedah State Authority as State land and such being the position there was no property which the deceased was competent to dispose at the time of her death. There was no property passing on the deceased's death to enable the levying of estate duty on the said property.

[Petition allowed with costs].

Legislation referred to:
Estate Duty Enactment 1941, ss. 2, 4, 5
National Land Code, ss. 100, 130, 131, 133

Other sources referred to:
Green's Death Duties, 7th. Edn. p.10

For the plaintiff - Arjan (Lee Kok Liang with him); M/s. Lee Kok Liang & Co.
For the defendants - Abu Samah Nordin (Badriah with him), SFC's

JUDGMENT

Mohamed Dzaiddin bin Haji Abdullah SCJ: The issue in this petition is simply whether an estate duty is leviable on the share of the property of Goh Aai, deceased, upon reversion of the property to the registered owners after her death.

The following facts are not in dispute. The deceased together with Tan Chin Hock (5/16 share), Mohd. Omar bin Haji Akhbar (4/16 share) and Faiz Mohd. bin Mohd. Osman (2/16 share) were co-owners of two pieces of property known as Lots 237 and 238 Mukim Tawar, Daerah Baling, Kedah (the said property). On 5 February 1972, the Land Administrator Kedah served on them Notice of Reversion to the State under s. 130 National Land Code (the Code), whereby, pursuant to s. 100 (for non-payment of quit rent), the said property was forfeited and reverted to the State Authority. The deceased passed away on 25 March 1979. Subsequently, the co-owners applied to the State Authority and was granted the annulment of the forfeiture of the said property under s. 133 of the Code. The plaintiff, as the executor of the estate of the deceased, proceeded to file a supplementary Estate Duty Affidavit in respect of the deceased's share in the said property. The second defendant made an assessment and levied supplementary estate duty on the said property. The plaintiff objected to the said assessment. Hence, this present petition.

It is clear from the written submissions that the assessment was made and duty leviable by virtue of ss. 4 and 5 of the Estate Duty Enactment 1941. Section 4 provides that all property whether settled or not which passes on the death of a person is leviable with duty. Section

5 states that property passing on the death of the deceased shall be deemed to include the following property:

(i) Property of which the deceased was at the time of his death competent to dispose;
(ii) Life tenancy;
(iii) Property taken as a *donatio mortis causa* made by the deceased, or taken under a disposition made by the deceased purporting to operate as an immediate gift *inter vivos* whether by way of transfer, delivery, declaration of trust or otherwise which shall not have been *bona fide* made seven years before the death of the deceased;
(iv) Joint Tenancy;
(v) Property passing under any past of future settlement;
(vi) Money received under a policy of assurance effected by the deceased on his life;
(vii) Any annuity or other interest purchased or provided by the deceased either by himself alone or in concert or by arrangement with any other person to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased.

The crux of Encik Lee Kok Liang's argument was that none of the categories under s. 5 above was applicable to the facts of the present case. Counsel submitted that even under s. 5(i), at the date of her death, the deceased had no interest in the said property which she was competent to dispose. The said property was at that point of time vested in the State Authority due to the forfeiture made under s. 130 of the Code. Therefore, relying on the fundamental principle of construction of taxing statutes, which must be interpreted strictly by reference to the words of the Act, counsel concluded that the second defendant was wrong to levy estate duty on the deceased's property under s. 5(i) of the Enactment.

Cik Badriah, Senior Federal Counsel, on the other hand, submitted that s. 5(i) applied here by virtue of ss. 131 and 133 of the Code. According to her, the effect of the forfeiture was that the land shall revert to and vest in the State Authority as State land. However, this was provisional because under s. 133, any proprietor of the land immediately before its forfeiture may at any time apply to the State Authority for the annulment of the forfeiture and the State Authority may, in its absolute discretion, refuse or allow the application. Thus, in this case, the land was subsequently realienated to the previous owners, who included the deceased. Therefore, by virtue of s. 5, Counsel was of the opinion that the said property belonged to the deceased which, at the time of her death, she was competent to dispose, and in the circumstances the second defendant was correct to levy the estate duty on the deceased.

It is trite law that estate duty is leviable on the principal or capital value of all property which passes on the death of a deceased person (s. 4). Under s. 2, "property passing on the death" includes property passing either immediately on the death or after any interval and either certainly or contingently and either originally or by way of substitutive limitation. Further, the property passing on the death of the deceased shall be deemed to include the property falling under any one of the categories mentioned in s. 5. For the present case, the relevant category is "property of which the deceased was at the time of his death competent to dispose".

The fundamental principle of construction of taxing statutes is that they must be interpreted strictly by reference to the words of the Act.

> In a dispute as to the construction of a taxing Act, it is for the Revenue to show that the case is within the Act, not for the taxpayer to show that it is outside ... . It is a first principle of taxing law that its language is not to be strained to an unnatural use in order to enlarge its scope. In dealing with taxing Acts there is no governing principle to look at: one has simply to go on the Act itself to see whether the duty claimed is what the Legislature enacted. The Court must take the statute as it stands and construe the words according to their natural significance." (**Green's Death Duties**, 7th ed. page 10).

Applying the above principles of strict construction, it is clear to me that s. 5(i) means what it says, that is that property passing on the death of the deceased shall be deemed to include the property of which the deceased was at the time of his death competent to dispose. There is no ambiguity in the section. From the facts, it is not disputed that at the time of the deceased's death on 25 March 1979, the said property remained vested in the Kedah State Authority as State land, and such being the position, I find there was no

property which she was competent to dispose at the time of the deceased's death. Hence, there was no property passing on her death to enable the second defendant to levy estate duty on the said property.

Accordingly, I allow this petition with costs.

ULU SELANGOR ESTATES SDN. BHD.

v.

NG KIM LENG (T/A SOON JOO & CO.)

HIGH COURT, KUALA LUMPUR
DATO' SITI NORMA YAAKOB J.
[SUIT NO. C2932 OF 1983]
10 MAY 1993

CONTRACT: Goods sold and delivered - Customs or usage - Payment on delivery - Independent evidence - Burden of proof on defendant - Admission of debt.

The plaintiff had been selling rubber to the defendant for a numbers of years. The plaintiff claimed against the defendant the sum of RM90,750.29, being the balance due.

The defendant does not deny purchasing rubber but disputed the amount claimed on the grounds that all monies due to the plaintiff had been settled in full on delivery.

Held:

[1] As customs or usage had been pleaded, it is incumbent upon the defendant to adduce independent evidence to prove the existence of such a usage or custom. A usage is not proved by merely bringing the person interested in establishing its existence to give oral evidence of its existence unsupported by any other evidence.

[2] All the invoices are written in Chinese and going through each voucher, what purports to be PW2's signature differs from voucher to voucher and in the face of such irreconcilable differences, it is incumbent upon the defendant to bring in other independent evidence to prove that the signatures on the invoices belong to PW2. In the absence of such evidence it can only be concluded that the defendant has failed to prove that PW2 had received part of the payment of the scrap rubber through the cash vouchers.

[Plaintiff's claim allowed with costs and interest].

Cases referred to:

Fielding & Platt Ltd. v. Najjar [1969] 1 WLR 358 ***(cit)***

Cebora v. SIP [1976] 1 LLR 271 ***(cit)***

For the plaintiff - S. Radhakrishnan; M/s. Shearn Delamore & Co.

For the defendant - S.S. Muker; M/s. Lovelace & Hastings